

Sub-sections (i) and (ii) of section 112 of the Criminal Procedure are as follows:—

- 112 (i) A police officer making a police investigation under this Chapter may examine orally any person supposed to be acquainted with the facts and circumstances of the case and shall reduce into writing any statement made by the person so examined.
- (ii) Such person shall be bound to answer truly all questions relating to such case put to him by such officer other than questions the answers to which would have a tendency to expose him to a criminal charge or to penalty or forfeiture.

Now, if the appellant had made at the police investigation a statement contradictory to the contents of his letter, he would have exposed himself to a criminal charge for giving false information to the police. Therefore he, the appellant, persisted in making the same statement at that police investigation as he had done in his letter, even though, according to himself, such statement was false, and what was true was the evidence he gave at the preliminary inquiry.

Accordingly the appellant, in making what he himself has stated was a false statement at the police investigation, is protected by the provisions of sub-section (ii) of section 112 of the Criminal Procedure Code, which allows a person not to answer truly any question which would expose him to a criminal charge.

Hence, on that second ground this appeal must succeed and the conviction and sentence quashed.

Appeal Allowed.

GOVINDASAMY v. PUBLIC PROSECUTOR.

[App. Crim. Juris. (Willan, C.J.), Malayan Union, Murray-Aynsley, C.J. and Bostock Hill, J.) October 15, 1947]

Penal Code, S. 193—Giving False Evidence—Alternative form of charge—Criminal Procedure Code, s. 116.

In this case the appellant was convicted on his plea of guilty under S. 193 of the Penal Code, in that he made contradictory statements in a police investigation and during the ensuing preliminary inquiry. The appeal was on the issue of law that the charge which was in the alternative, was bad in that a statement made in the course of a police investigation cannot be linked with evidence given during a judicial proceeding so as to form the basis of an alternative charge under S. 193 of the Penal Code.

Held, that alternative charges based on contradiction between a statement made in the course of a police investigation and evidence given in the course of a preliminary inquiry in the same matter will lie.

Case referred to:—

- (1) *Ramamoorthy v. Public Prosecutor* (1948) M.L.J. 43.

CRIMINAL APPEAL.

R. Ramani for the Appellant.

C. H. Whitton (Crown Counsel) for the Respondent.

The judgment of the Court of Appeal was given by:—

Willan, C. J.:—In this case the appellant was convicted on his plea of guilty under section 193 of the Penal Code, in that he made contradictory statements in a police investigation and during the ensuing preliminary inquiry.

The appeal is on an issue of law that the charge, which was in the alternative, is bad in that a statement made in the course of a police investigation cannot be linked with evidence given during a judicial proceeding so as to form the basis of an alternative charge under section 193 of the Penal Code.

In the appeal of *Ramamoorthy v. Public Prosecutor*⁽¹⁾ we have decided that such an alternative form of charge lies. In this appeal there is not the added complication which was present in the appeal just mentioned, and therefore this appeal is dismissed and the conviction and sentence of eighteen months rigorous imprisonment maintained.

Since the appellant has been on bail pending appeal, the sentence will commence to run from the date of this judgment, taking into account that the appellant has already served part of his imprisonment from the 1st to the 15th July, 1947.

Appeal Dismissed.

ALI BIN HAJI ABDULLAH v. PUBLIC PROSECUTOR.

[App. Crim. Juris. (Murray-Aynsley, C.J.), Singapore, Spenser Wilkinson and Brown, J.J.) October 29, 1947]

Penal Code Ss. 299 and 300—Death caused in consequence of rape—Whether conviction for murder will stand—Misdirection.

In this case a young girl of about 10 years was found dead and the medical evidence disclosed that the cause of death was violence employed in the course of a rape. There was no indication of any violence other than that used in effecting the rape. The accused was convicted of murder.

Held, (i) that as there was no indication in this case of any intention other than to rape or of any violence other than that necessary to effect the rape the conviction for murder cannot stand; (2) that there was a misdirection in the summing-up of the learned judge and that this prevented the substitution of a conviction for any lesser offence.

Case referred to:—

- (1) *Shambu Khatri v. Rex* (1924) 3 Patna 410.

CRIMINAL APPEAL.

B. H. Chia for the Appellant.

W. M. McCall (Crown Counsel) for the Respondent.

The judgment of the Court of Appeal was given by :—

Murray-Aynsley, C. J. :—In this case the appellant was convicted of murder and sentenced to death.

The facts of the case are that a young girl about 10 years of age was found dead and the medical evidence disclosed that the cause of death was violence employed in the course of a rape. There was no indication of any violence other than that used in effecting the rape. In view of the specific intention required by sections 299 and 300 of the Penal Code (which differs considerably from the English Common Law) we considered (following the Indian case of *Shambu Khatri*⁽¹⁾ in which we agree with the reasoning of Bucknill, J. and do not find it necessary to add anything) that there was no evidence on which the appellant could be convicted under section 299 or section 300.

It remained to be considered whether the appellant could be convicted of anything else.

It appears that the appellant was living with his wife and the deceased. The wife left in the early morning to tap rubber. The appellant and the deceased were then alone. The wife says that she came back about 11 a.m. and that when she called for the deceased the appellant said that she had gone to the place where she, the wife, worked. When the wife persisted in her efforts to find the deceased, the appellant became violent and in the course of a struggle stabbed her with a bayonet. The wife says that she ran away, and, as she ran, saw smoke coming from the house. The wife was not a satisfactory witness but she was undoubtedly stabbed by someone.

As a result of a report by the wife police came to the scene at about 12.30 p.m. and found the body of the deceased about 30 ft. from the house and the house burned. The house was near the main road and surrounded by lallang and blukar.

Later that day the appellant was arrested, while trying to avoid the police. On his clothing were found bloodstains.

The case against the appellant was that he had opportunity but not exclusive opportunity, his conduct at the time of the wife's return, and the bloodstains on his clothing. We consider that the conduct of the

appellant subsequent to 11 a.m. may be explained by the attack on his wife and does not in any way indicate that he was guilty of the present offence.

In his defence the appellant said that he went to Kluang that day by bus and had no knowledge of the offence. He denied the story of his wife as to her return at 11 a.m. and her subsequent wounding. He called no evidence in support of his statement.

The case against the appellant was, therefore, purely circumstantial and need to be put to the assessors with an unusual degree of care. In particular it was necessary to deal very carefully with the evidence of the bloodstains.

It must be remembered that, according to the case for the prosecution, the appellant had wounded his wife and unless it can be shown that the bloodstains are not a result of this wounding, they do not tend to prove that the appellant is guilty of rape.

Technical evidence as to the bloodstains was given by Mr. Briggs, a chemist from Singapore. He said :—

"I submitted white shorts (Ex. 4) (these are assumed to have been worn by the appellant when arrested) to analysis for human bloodstains and found the areas marked in ink 3 and 4 to be stained with human blood. Along the hem of the leg of shorts nearly every spot examined proved to be human blood. The stains were rather weak, as if smudges of blood, as opposed to stains which soaked into material. Also any washing would account for the weakness of the stains. When I received the shorts, although they were dirty, they did give the impression of having been recently washed. None of the stains had the appearance of drops of blood — none penetrated thickness of cloth".

"I see the baju (Ex. 6). The stains over left side have the appearance of blood. The stains on the shorts are not consistent with the blood on the baju having come into contact the shorts. I found nothing conclusive of seminal stains on the shorts (Ex. 4)".

In the course of his summing up the learned Judge said :—

"The next evidence against the accused is the bloodstains found on his shorts. There were bloodstains in Long's baju over the left breast. There is evidence, if you believe Long's story, that she struggled with accused, and bloodstains were found at the

bottom hem of his shorts. But you have heard the evidence of Mr. Briggs that the bloodstains on the shorts were not consistent with having been made by contact with the baju. They were two different types of bloodstains. You must give Mr. Briggs's evidence very careful consideration. If they are not consistent with the bloodstains on the baju, then the point is 'Where did the bloodstains come from?'. There must have been two sources of bloodstains and the only source we know of was the little girl. There is evidence that she was practically split in two and there was a quantity of blood on her and underneath her on the ground".

We think this constitutes a misdirection. The fact that the blood on the shorts did not come there from contact with the baju in no way indicates that they were unconnected with the wounding of the appellant's wife. The argument of this passage is that because the bloodstains did not come from the wife they must have come from the deceased. We cannot find anything in the evidence which suggests that they were connected with the deceased rather than with the wife.

In view of this we consider that even if the assessors had returned a verdict with relation to the deceased of any offence other than murder such verdict could not have stood and, in the circumstances, all we can do is to allow the appeal and quash the conviction.

Appeal Allowed.

THAMBI DURAI v. PUBLIC PROSECUTOR.

[App. Crim. Juris. (Willan, C.J. Malayan Union, Murray-Aynsley, C.J. Singapore and Pretheroe, J.) March 26, 1947]

Penal Code Ss. 302 and 331 — Whether person who beats another with the intention of extorting a confession and thereby causes his death is guilty of murder — Misdirection.

In this case the facts showed that the appellant was responsible for and took part in the beatings which caused the injuries resulting in the death of the accused. He was convicted of murder and he appealed against his conviction.

Held, (1) that if the evidence is sufficient to show that the intention of the assailant was to cause such bodily injury as the assailant knew to be likely to cause death, then the assailant would be guilty of murder even though at the same time the primary object of the beating was to extract a confession from the victim; (2) that in this case there was misdirection in the summing up and as the Appellate Court was unable to say that the Assessors would have inevitably arrived at the same verdict if they had not been so misdirected, the conviction for murder must be quashed.

CRIMINAL APPEAL.

P. D. Regester (R. P. S. Rajasooria with him) for the Appellant.

D. B. W. Goode (Crown Counsel) for the Respondent.

The judgment of the Court of Appeal was delivered by :—

Willan, C. J. : — In this case we have no doubt that the Appellant was responsible for, and took part in, the beatings which caused the injuries resulting in the death of the deceased.

As in other cases in which an assailant beats his victim with the intention of extorting a confession and death is caused, the question of whether the assailant is guilty of murder is one of how far the assailant intended to go. We are unable, however, to agree with counsel for the Appellant that a person who tortures another in order to extract a confession can never intend the other to die, nor can he be presumed to know that death is likely to result, because his object is to make his victim admit his guilt, and he cannot secure that if he knowingly kills his victim. That proposition, cited from *Gour* on the Penal Law of India, goes too far, and we are unable to accept it. In our view, if the evidence is sufficient to show that the intention of the assailant was to cause such bodily injury as the assailant knew to be likely to cause the death of his victim, then the assailant would be guilty of murder even though at the same time the primary object of the beating was to extract a confession from his victim.

Applying that test of intention to the facts of this case, the question which had to be decided at the trial was whether the Appellant had the knowledge, belief or expectation that when the deceased was beaten, as he was, but not with a deadly weapon, death would in the ordinary course of things ensue.

In this case it is true that the beating which the deceased received broke his ribs, but that in itself is not sufficient in the ordinary course of things to cause death. This case is particularly difficult because there was no post-mortem examination and no medical evidence as to the specific cause of death. The medical evidence merely disclosed the broken ribs, nothing further, and hence, since no deadly weapon was used by the appellant or the other assailants assisting him, the directions of the learned trial Judge to the Assessors as to the intention necessary to bring this case into the category of murder must be scrutinised with particular care.